IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2373 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDUBHAI BALABHAI PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,
Mr.R.C.Kodekar, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 13/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This Criminal Appeal is filed under Section 374 of Criminal Procedure Code by the appellant – accused who has been convicted by the Presiding Officer, 7th Fast Track Court, Vyara in Sessions Case No.58 of 2004 for the offence under Section 302 of the Indian Penal Code and sentenced him for life imprisonment and fine of Rs.1,000/-, i/d simple imprisonment for six months. However, the appellant accused was acquitted for the offences under Section 324 of Indian Penal Code and 135 of Bombay Police Act.

2. The short facts of the prosecution case are as under :

2.1 On 14.4.2004, P.S.I. Shri V.M.Jadeja of Vyara Police Station was on his duty, at that time, at about 9.00 p.m., the complainant and his daughter Sunitaben came to the police station and narrated the incident and as their physical condition was serious, he directed the P.S.O., to make arrangement to send them for treatment at Referral Hospital, Vyara along with police yadi. He also followed them and went to Referral Hospital, Vyara, where he has recorded the complaint given by the complainant – Budhiyabhai Kaliabhai and obtained his signature upon the complaint and he also signed the same. Thereafter, he has sent the same to Vyara Police Station for the purpose of registering the offence. On receiving the same, P.S.O., registered the complaint as Vyara

Police Station I CR No.58 of 2004 under Sections 336 and 324 of Indian Penal Code and Section 135 of Bombay Police Act. Thereafter, the said complaint has been handed over to P.S.I. Mr.Shaikh for further investigation. Mr.Shaikh has started further investigation in the matter. He went to the scene of offence and prepared panchanama of scene of offence in the presence of panchas which place was shown by one Kalidasbhai. Thereafter, he has inquired about the injured Sunitaben and he got information that she had been referred to Civil Hospital, Surat for further treatment. Therefore, he has first recorded the statement of various witnesses who were staying very near to the scene of offence.

2.2 Thereafter, as the accused was arrested, P.S.I. Mr.Shaikh has prepared the panchanama and seized the clothes which were worn by the accused and during that process, he and the panchas found that the pant, which was worn by the accused at the time of incident, was having blood stains and the said pant was seized by the panchanama. As the accused – appellant had shown willingness to show and produce the knife which has been used in the alleged offence. Mr.Shaikh had called two panchas and first he prepared the primary panchanama at police station and they followed the accused and ultimately muddammal knife has been discovered at the instance of the accused and panchanama to that effect had been drawn. Thereafter, Mr.Shaikh went to Civil Hospital, Surat and had recorded the statements of Sunitaben and

also made arrangement to record the dying declaration of Sunitaben and for that yadi has been sent to Executive Magistrate. The Executive Magistrate has recorded the dying declaration, and, on 18.4.2004, at about 2.00 p.m., during the course of treatment Sunitaben succumbed to the injury at the Civil Hospital, Surat. Mr.Shaikh has added the offence under Section 302 and has informed the court accordingly. He prepared the inquest panchanama and also seized the clothes which were worn by the deceased at the time of incident and also made arrangement to send her dead body for post-mortem and for that yadi has been sent and on completion of the post-mortem, he collected the post-mortem note and death certificate and the same has been kept in investigation file.

2.3 Mr.Shaikh also recorded further statement of various witnesses on 18.4.2004 and he made arrangement to send the muddammal which has been seized in the FSL with forwarding letter and on receiving the report, it has been kept in file. At the end of investigation, he submitted the charge sheet in the Court below.

2.4 As the offence registered against the accused is exclusively triable by the Court of Sessions, the learned JMFC committed the same in the Court of Sessions. On receiving the same, it has been numbered as Sessions Case No.58 of 2004 and, thereafter, it has been transferred in the Court of

Additional Sessions Judge, Vyara for trial. The learned Additional Sessions Judge has framed the charge against the accused. As the accused has pleaded not guilty and prayed for trial, the prosecution examined 18 witnesses wherein the important witnesses are :

P.W.1 – Budhiyabhai Kaliyabhai Gamit – Exh.6, injured complainant, father of victim Sunitaben.

P.W.2 – Jayeshbhai Kalidasbhai Chaudhary – Exh.8, eye witness.

P.W.8 – Vinodbhai Narotambhai – Exh.14, panch of scene of offence.

P.W.10 – Dr.Alokkrishna Jaykrishna Chandak, Exh.21, the doctor who has treated Sunitaben and Budhiyabhai and thereafter referred to Civil Hospital, Surat.

P.W.17 – Dr.Sanjay Kedarlal Gupta, Exh.52, the doctor who has performed the post-mortem of Sunitaben.

P.W.18 – Dr.Manojbhai Shamalbhai Patel, Exh.57, the doctor who was serving in civil hospital, Surat as a resident medical doctor who has treated deceased Sunitaben.

P.W.11 – Dilipbhai Damubhai Patel – exh.25, he recorded the dying declaration of Sunitaben in Civil Hospital, Surat.

P.W.15 – Shri Virbhadrasinh Mahipatsinh Jadeja – Exh.34 who was serving as P.S.I., at Vyara Police Station and who recorded the complaint of complainant.

P.W.16 – Shri Salimbhai Basirbhai Shaikh – Exh.38 who has taken over the investigation after registering the offence and submitted the charge sheet.

2.5 The prosecution has also produced and placed reliance upon the documentary evidences which are 19 in number. Out of them for the purpose of deciding the appeal, following documents are important:

Complaint Exh.7,

Panchanama of scene of offence Exh.15,

Discovery panchanama Exh.31,

Panchanama of seizure of clothes Exh.32,

Yadi written by I.O., to Executive Magistrate for the purpose of taking dying declaration of Sunitaben Exh.35,

Dying Declaration Exh.39,

Inquest panchanama Exh.50,

Panchanama of seizure of clothes from the body of the deceased Exh.51,

P.M.Note Exh.54,

Cause of death certificate Exh.55,

FSL report Exhs.45,46 and 48,

Opinion Exhs.47 and 49, and

Station dairy entry Exh.42.

2.6 On submission of the closing purshis by the learned APP, learned Additional Sessions Judge recorded further statement of appellant – accused under Section 313 of Criminal Procedure Code and,

after giving opportunity to the parties concerned, he delivered the judgment and convicted the accused as stated above.

3. Being aggrieved and dissatisfied with the above referred judgment, the accused has sent the appeal through the jail authorities. On receiving the same, it has been numbered as Criminal Appeal No.2373 of 2005 and same has been handed over to learned counsel Mr.Majmudar. Today, Mr.Majmudar appeared before the Court and argued the matter at length from the case papers. Over and above, he has also gone through the original record and proceedings of the Sessions Case No.58 of 2004 which we have provided.

4. Learned advocate for the appellant has concentrated his arguments on the point of dying declaration and he took us through the dying declaration exh.27 and along with the oral evidence of Executive Magistrate – Dilip Damubhai Patel, P.W.11 Exh.25, Dr.Manoj Patel, Dr.Sanjay Gupta and also oral evidence of P.S.I. Shri Shaikh – P.W.16 Ex.58. It has been argued that looking to the physical condition of the victim, the victim was not in a position to give dying declaration and Executive Magistrate has recorded the same without verifying the physical condition and without obtaining opinion of the doctor. Frankly, he has admitted that law on this issue is very clear that if dying declaration is trustworthy and free from all doubts, then court can rely upon the same and a person can be convicted only

on the basis of dying declaration and if dying declaration is such, then it does not require any corroboration.

5. Learned APP has also argued on the above referred point on the basis of above referred oral evidence as well as the medical evidence and dying declaration. He has also placed reliance upon the law laid down by the Hon'ble Apex Court in the case of **Laxman V/s State of Maharashtra,** reported in **(2002) 6 SCC 710.**

6. We have also gone through the oral as well as documentary evidence which has been shown to us by the learned counsel for the respective parties along with the reasoned judgment delivered by the court below and keeping in mind the law laid down by the Apex Court in case of dying declaration, we have read the evidence minutely. Firstly, we have taken into consideration the evidence of doctor Dr.Manoj Patel – Resident Medical Officer, Civil Hospital, Surat, P.W.18 Exh.57. He has categorically deposed before the Court below that at the time of incident i.e., on 15.4.2004, he was rendering his service as a Resident Doctor in the Civil Hospital in Surgical Unit. Along with him, there was one other doctor viz., Mr.Manish Tiwari. He has categorically deposed that when Sunitaben was brought in the ward, he recorded the history in the case papers as has been narrated by her. According to him, Sunitaben has categorically stated before him that her husband has given knife

blow into her stomach on 14.4.2004 at about 7.30 p.m., at Malivad, Vyara. According to him, the same has been noted by him in his own handwriting and he has proved the same before the Court. He has also narrated further treatment given to Sunitaben. He has also proved indoor treatment certificate exh.60. He has also deposed at para 5 that before making endorsement upon Yadi of dying declaration, he and Dr.Tiwari both were there in the ward and Dr.Tiwari has made endorsement in his presence and also signed the same and he has identified the same and also deposed that at that time Sunitaben was fully conscious. He has also deposed after seeing the muddammal knife that the injury which has been received by Sunitaben is possible by muddammal knife and it was sufficient to cause death in ordinary course of nature. He is thoroughly cross-examined and nothing has come out which shakes his evidence. Not only that, in para 7 he is thoroughly cross-examined on the point of endorsement made by Dr.Tiwari on the yadi of dying declaration Exh.59. Over and above, we have also minutely gone through the evidence of Dilip Patel Executive Magistrate, P.W.11 Exh.25. He has deposed before the Court below that he received yadi for recording the dying declaration of Sunitaben w/o Chandubhai Patel on 16.4.2004 at about 2.00 a.m., at night and he has made endorsement to that effect upon the yadi. He has proved the same at Exh.26. Therefore, he reached the Civil Hospital, Surat at about 2.20 at night and he found out the patient Sunitaben with the help of the staff in E-2 ward.

Thereafter, he has informed Sunitaben that he is Executive Magistrate and he came for the purpose of recording her dying declaration. Thereafter, he has also verified and as she was conscious and able to give dying declaration, he recorded the same in question-answer form. According to him, she has categorically deposed that her husband has given knife blow to her. She has also narrated the incident in short and, thereafter, according to him, on completion of dying declaration Exh.27, he has taken the signature and he himself has also signed and dying declaration has also been proved by him.

7. We have also gone through the dying declaration. In complaint also which is the earliest version when both were in Vyara Referral Hospital, the complainant had also narrated the same in complaint before P.S.I., and P.S.I., has also proved the same in his oral evidence P.W.15 Exh.34. So, in short, there are two dying declarations on record of Sunitaben and also the complaint which has been filed at the earliest opportunity which has been recorded by the P.S.I. In both the dying declarations, it has been established that while giving dying declaration, Sunitaben was fully conscious and she was able to give dying declaration. Even doctor has opined so. Not only that Dr.Sanjay Gupta has opined after seeing the case papers which has been part of the record and after checking the treatment sheet etc. and, as he

was Resident Medical Doctor, throughout he was there and according to him, she was conscious. In these circumstances, once it has been established beyond reasonable doubt that she was conscious and she was able to give dying declaration, and if we evaluate the evidence of Executive Magistrate, more particularly, when it is trustworthy and while recording the dying declaration, he has taken all sufficient care and there is no cross-examination on that line, and that at the time of recording dying declaration, her relatives were there and they have an opportunity to tutor her etc., it can be said that the dying declaration is totally trustworthy. Even prior to that also, she gave the dying declaration before Dr.Gupta and same has been recorded in the case papers as has been narrated to Dr.Gupta. So, in view of the above, we are fully satisfied with the dying declaration by which the name and role which had been played by the accused has been thoroughly established.

8. She has categorically stated in the dying declaration that her husband has given knife blow on her vital part i.e., stomach which ultimately resulted into fatal injury, which has been proved by way of post-mortem also. For that, the prosecution has relied upon the oral evidence of Dr.Patel – P.W.18, Exh.57. The doctor who has performed the post-mortem of Sunitaben has also deposed before the Court that this injury is possible by way of muddammal knife. Even, Dr.Gupta has also deposed the

same. Not only that, knife has been discovered under panchanama under Section 27 of the Evidence Act at the instance of the accused himself from the place which was not accessible to anybody and in the normal circumstances. Not only that, when the knife has been seized, it has been recorded in the seizure panchanama, that knife was having blood stains and, therefore, the knife and clothes which were worn by the accused at the time of incident were seized from the body at the time of his arrest.

Along with the clothes of the accused, the clothes of the deceased and muddammal were sent to the FSL. The FSL submitted the reports at Exhs.45,46,47,48 and 49, where the Expert has opined that the blood which is found from the above referred article i.e., muddammal knife and pant, which was seized and alleged to have been worn by accused, having the blood stains was of human blood and group was `A'. The pant, which was seized, was alleged to have been worn by the accused and, it was found that pant is also having blood stains and as per serological report, it was human blood of group `A'. It has also been established by the prosecution that blood group `A' was the blood group of the deceased. In view of the above, the prosecution is able to prove the charge against the accused beyond reasonable doubt.

9. We are not discussing the evidence of each witness in detail in view of the observations made by

the Hon'ble Apex Court in the case of **State of Karnataka V/s Hemareddy** reported in **AIR 1981 SC 1417** which reads as under :

> "..... This Court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93 : (AOR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

10. Under the above circumstances, appeal is required to be dismissed and it is accordingly dismissed. Notice is discharged.

(R.P.DHOLAKIA, J)(SHARAD D DAVE, J)

srilatha